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WOOD'S EX'R et al. v. WOOD et al.

March 11, 1909.

[63 S. E. 994.]

1. Wills (§ 49*)—Testamentary Capacity—Illiterate Persons.—A man 70 years of age, who possesses mental and physical capacity to attend accurately and successfully to the affairs of life, though unable to read or write, possesses testamentary capacity.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 70; Dec. Dig. § 49.* 13 Va.-W. Va. Enc. Dig. 711, 712.]

2. Wills (§ 155*)—"Undue Influence."—"Undue influence." to set aside a will, must destroy the free agency of testator, must amount to coercion, and it must be shown that testator had no free will, but stood in vinculis.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 375; Dec. Dig. § 155.* 13 Va.-W. Va. Enc. Dig. 386.]

For other definitions, see Words and Phrases, vol. 8, pp. 7166-7172, 7823, 7824.]

3. Wills (§ 163*)—Undue Influence—Burden of Proof.—One charging that a will was procured by undue influence has the burden of proof.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 389; Dec. Dig. § 163.* 13 Va.-W. Va. Enc. Dig. 394.]

4. Wills (§ 166*)—Undue Influence—Evidence.—In a suit to set aside a will, evidence held not to show undue influence.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 421; Dec. Dig. § 166.* 13 Va.-W. Va. Enc. Dig. 387. et seq.]

5. Wills (§ 166*)—Undue Influence—Evidence.—A jury cannot set aside a will on the ground of undue influence, merely because in its judgment a more equitable disposition of testator's property could have been made.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 429; Dec. Dig. § 166.* 13 Va.-W. Va. Enc. Dig. 391, 392; 715, et seq.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.